521.

SUPREME COURT OF THE UNITED STATES.

No. ~~91~~ 57.

EX PARTE—IN THE MATTER OF THE LIFE AND FIRE INSURANCE COMPANY OF NEW YORK, PLAINTIFF,

VERSUS

CHRISTOPHER ADAMS.

ON A MOTION OF PLAINTIFF FOR A MANDAMUS, TO THE DISTRICT COURT U. S. FOR E. LOUISIANA.

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THE LIFE AND FIRE INSURANCE COMPANY OF NEW YORK, *against* CHRISTOPHER ADAMS. } *No.* 2,364. *District Court U. S. Eastern District of Louisiana.*

To the honorable the Supreme Court of the United States:

THE PETITION OF THE PLAINTIFFS ABOVE NAMED, RESPECTFULLY REPRESENTS:

That Christopher Adams, of Iberville, Louisiana, on the 16th January, 1824, executed and acknowledged, at New Orleans, before a notary public, a mortgage of a certan plantation, called the Belle plantation, in Iberville, aforesaid, with the cattle, stock, and implements belonging to the same, and also, 70 slaves, particularly named in said mortgage, for securing to your petitioners divers sums of money, amounting together to $ 32,522 50, and to be paid at the following periods:—$25,000 in five equal annual payments, the first payment to be made on the 18th January, 1825; $1,500, other part thereof, in six months from the 18th November, 1823; $1,200 in eight months; $900 in thirty months; $600 in forty-two months; $300 in fifty-four months; $1,208 75 in twelve months; $906 25 in twenty-four months; $605 in thirty-six months, and $302 50 in forty-eight months, all from the same 18th November, 1823, with interest, and for the whole of which sums the said Adams passed his promissory notes. That the note for $1,500, at six months, was paid, but no further part of the said debt having been paid, and $8,315 having become due, your petitioners filed their petition on the 15th February, 1826, in the District Court of the United States, for the Eastern District of Louisiana, upon the said mortgage, (which conveyed a title importing a confession of judgment, and upon which they were entitled to a summary and executory process,) praying for an order of seizure and sale of said mortgaged premises, for the payment of said debt and interest, which was thereupon granted, and the said premises were seized by the marshal thereunder. But the sale of the same was afterwards injoined by the said District Court, at the instance, and upon the bill of said Adams. That on the 2d May, 1826, the said parties entered into an agreement before a notary public, whereby the said Christopher Adams consented that the said injunction should be dissolved; that judgment should be forthwith entered up, in the said District Court, for such of the said instalments as had then arrived at maturity; and that for the residue of the said notes, mentioned in the said mortgage, judgment should be confessed in the said Court from time to time as each and every of them should fall due, with interest thereon: and the said plaintiffs thereby agreed, in consideration of such confession of judgment, to stay the execution and sale of the said mortgaged premises thereunder, until the last of the said notes should arrive at maturity, which would be on the 18th January, 1829. That at a District Court, held for the said District, on the 18th May, 1826, by the honorable T. B. Robertson, it was adjudged and decreed, in pursuance of said agreement, that the said injunction should be dissolved, and that judgment be entered up in favor of the said plaintiffs, for all the said notes which had become due [specifying each] with interest; and that whenever any of the said notes which had not then arrived at maturity should become due and payable, judgment should be entered up for the plaintiffs upon all and every of the said notes, as they should arrive at maturity, until final payment; and it was further adjudged and de-

greed, that there should be a stay of execution on the said judgment until the 18th January, 1829, and that, if the said judgment should not then be paid, with interest and cost, the said mortgaged premises should be sold to satisfy the said judgment; all of which was entered on the minutes of the said Court. That, by a statute of Louisiana* adopted by and regulating the practice of the said District Court, in this respect, "all judgments rendered by "the said Court, shall be pronounced in open Court, and be entered on the "minutes of the Court by the clerk, and shall, three days thereafter, if not "set aside by the Court, upon a motion for a new trial, be signed by the "presiding Judge of the Court." That a new trial was never applied for or granted. That before the time had arrived when execution, in pursuance of the said judgment, could have issued thereon, and before the said judgment had been signed by Judge Robertson, he departed this life, to wit, in the autumn of 1828. That the said debt still remaining unpaid, your petitioners, on the 21st May, 1832, after due notice thereof to, and appearance by, the defendant, made application to the present Judge of the said District Court, (the honorable Samuel H Harper,) and moved that he sign the said judgment and order execution to issue thereon, which motion the said Samuel H. Harper overruled and refused to sign the said judgment, on the ground that he, as the successor of Judge Robertson, could not sign the same, and that the judgment must be, and could only be, signed by the Judge who pronounced it, otherwise that it became a nullity. In confirmation of all which allegations, your petitioners refer to a duly certified copy of the record of said suit, and of the opinion of said Samuel H Harper, accompanying this petition, and conceiving that they are entitled to have the said judgment signed, and to have the full benefit thereof, by execution thereon, therefore your petitioners pray that a writ of mandamus do issue from your honorable Court, directed to said Samuel H. Harper, Judge of the District Court of the United States for the Eastern District of Louisiana, ordering him to sign the said judgment, and to direct that execution issue upon the same; and as in duty, &c.

WM. REDIN.
Attorney for Plaintiffs.

WM. R. THURSTON, *President of the Mercantile Insurance Company of New York.*

UNITED STATES OF AMERICA, *Southern District of New York,* } *to wit:*

William R. Thurston, whose name is above subscribed, of the said city, appeared personally before me the subscriber, Samuel R. Betts, a Judge of the United States, and made affirmation in due form of law, before me, that the facts stated in the aforegoing petition are true and correct.

Affirmed to this 24th day of December, 1832, before me,

SAMUEL R. BETTS,
Judge of the U. S. for the Southern Dist. of N. York.

* By act of Congress of May 26, 1824, the practice of the State Courts in Louisiana was adopted in the District Court of the United States. The practice as it existed then is preserved in that court; although the practice in the State Courts has been changed by the code of practice, which went into operation on the 2d October, 1825. The statute regulating the practice in civil cases, under which all proceedings were conducted anterior to the adoption of the code of practice, was passed on the 10th April, 1805. The above citation is from the 11th section. See 2 Martin's Dig. 164.

DISTRICT COURT OF THE UNITED STATES, *Eastern District of Louisiana,* } ss.

Be it remembered, that on the 15th day of February, 1826, into the District Court of the United States for the Eastern District of Louisiana, came the Life and Fire Insurance Company, of the city of New York, by Ripley and Conrad, their attorneys, and filed the following petition, to wit:

To the honorable Thomas Bowling Robertson, Judge of the United States Court in and for the Eastern District of Louisiana, humbly shows:

The corporation established in the city of New York, pursuant to a law of the State of New York, called and known by the name of the Life and Fire Insurance Company of the city of New York, and all the individuals and proprietors, of which the same is composed, being citizens of said State of New York; that Christopher Adams, a citizen of the State of Louisiana, residing in the parish of Iberville, in said State, and within the aforesaid Eastern District of Louisiana, at the city of New Orleans, on the sixteenth day of January, Anno Domini, one thousand eight hundred and twenty four, before Carlisle Pollock, a notary public in and for said city, did make and execute the act of mortgage hereunto annexed, and prayed to be considered and referred to as a part of this petition, for the purpose of securing the payment of the said sums of money in said act mentioned, amounting together to the sum of thirty-two thousand five hundred and twenty two dollars and fifty cents; and the petitioners show that the said Adams did then and there by virtue of said act, hypothecate and mortgage to your petitioners the following enumerated and described property, to wit: all that plantation situate, lying, and being in the parish of Iberville, aforesaid, five leagues above Lafourche, designated and known by the name of the Belle Plantation, measuring fourteen arpens in front, on the right bank of the river Mississippi, by eighty arpens in depth; bounded on the upper side by land theretofore, at Nicholas Willon, then the property of John Oldham, of this city, and below by land belonging to widow Blanchard, together with all the buildings and improvements thereon, and appurtenances thereunto belonging, being the same tract of land which the said Christopher Adams acquired by purchase from Aubry Dupery and Samuel Spraggins, by acts recorded in the office of the judge of the parish of Iberville; also, all the cattle and stock of whatever description, implements of husbandry, and moveables now on and belonging to said plantation; also, seventy slaves of the following names and ages, Old Billy fifty years, Cook forty years old, John forty years, Old Moses forty years, Little Moses sixteen years, Jerome fifty years, Old Lewis forty years, Young Lewis eighteen years, Kentucky Lewis twenty years, Big Bill twenty seven years, Kit twenty nine years, Frank thirty years, Big John twenty six years, John Winfrey thirty five years, Jack Wright eighteen years, Dick twenty-eight years, Daniel twenty years, Sandy twenty-two years, Jim Barber twenty-two years, Little Sam twenty-two years, G. Sam twenty four years, Charles eighteen years, Squire sixteen years, Cuffy sixteen years, Henry twenty-two years, Spencer twenty-eight years, Pompey thirty-five years, Caleb twenty-five years, Tom eighteen years, Little Jim twenty-one years, Ned thirteen years, Old Aleck thirty four years, Little Aleck ten years, Manuel eight years, Priscey forty years, Daphne forty years, Peggy thirty years, Old Aggy thirty years, Little Aggy eighteen years, Little Clarissa eighteen years, Polly sixteen years, Big Maria twenty-four years, Lucy twenty two years, Lydia twenty-seven

years, Eddy sixteen years, Sydney fourteen years, Susan twenty-five years, Celeste twelve years, Jenny twenty-six years, and her three children, Rosine of four years, Giles three years, and Margarette one year, Big Clarissa twenty-six years, and her three children Barbary six years, Sam four years, and John two years, Meline twenty-two years, and her two children, John four years, and William two years, Anne twenty years, and her two children, Jim four years, and Louisa one year, Mariame twenty four years, Solomon her child two years, Little Maria twenty years, and her two children Martha three years, and Ploge one year, Maria Jones twenty-four years, and her two children Jim six years, and Eliza two years, all which slaves are warranted free from the vices and maladies prescribed by law.

Which said land, together with all the buildings, improvements, appurtenances, cattle, stock, implements of husbandry and moveables thereon, together with said slaves, are by said act of mortgage to remain mortgaged and hypothecated to your petitioners, until the full and entire payment of said sum of thirty-two thousand five hundred and twenty-two dollars and fifty cents, represented by the several distinct promissory notes mentioned and enumerated in said act of mortgage: and your petitioners further show, that said authentic act of mortgage so executed, as aforesaid, is a title importing a confession of judgment, and that they are entitled to a summary and executory process to have the same executed; and your petitioners further allege that no part of the said sum or sums of money mentioned in said act of mortgage, aforesaid, as due to your petitioners, except one of said notes, to wit, the first payable, for the sum of fifteen hundred dollars, which has been paid, but that the whole of said sum, excepting said fifteen hundred dollars, is now owing by Christopher Adams to your petitioners, and that eight thousand three hundred and fifteen dollars thereof is now due and payable, as will clearly appear by reference to the several original promissory notes, which, by the stipulations and terms of said act of mortgage, represented said sum so due and payable, as aforesaid, which notes so due are hereunto annexed, and prayed to be considered as part of this petition; and your petitioners further show that, though amicably demanded, the said Christopher Adams has not paid, and refuses to pay, the said sum of money so owing by him, and now due and payable, as aforesaid, to your petitioners: wherefore your petitioners pray an order of seizure and sale in the premises, directing the marshal of said district to seize the property, lands and slaves, cattle, stock, implements of husbandry, and moveables on said land belonging to said Adams, set forth, enumerated and described in the authenticated act and title of mortgage, aforesaid, and the same duly to expose to sale and sell for the payment of all the said debt, and especially for the sum of eight thousand three hundred and fifteen dollars due, owing, and payable, as aforesaid, to your petitioners, with interest, damages, and costs, and that judgment be entered up against said Adams for the said amount to be paid as aforesaid with costs.

RIPLEY & CONRAD,
for petitioners.

Josiah Barker, agent of the Life and Fire Insurance Company of the city of New York, being duly sworn, declares that the facts stated in the foregoing petition are true, and that Christopher Adams, mentioned in said petition, is indebted unto the said Insurance Company, in the sum of thirty-two thousand and twenty-two dollars and fifty cents; that the said Adams is in-

debted to the said Company in said sum and interest, as in said petition stated, to the best of this deponent's knowledge and belief, that no part of said debt has been paid, and that the promissory notes of said Adams attached to said petition, are now owing, due, and payable to the said Life and Fire Insurance Company by said Adams, and that no part of said notes has been paid.

JOSIAH BARKER.

Sworn to and subscribed before me, this 15th February, 1826.

J. BERMUDES,
Associate Judge of the City Court of N. Orleans.

The original notes referred to in the foregoing petition having been withdrawn by the plaintiff, the following receipt will occupy their place.

Received, New Orleans, January 23, 1827, of the clerk of this Court, the original notes on which this suit was brought; which notes are four in number, all dated 18th November, 1823, one for $5,000, one for $1,200, one for $1,208 75, and one for $906 25.

JOSIAH BARKER.

Mortgage.

STATE OF LOUISIANA, *City of New Orleans.*

Be it known, that this day, before me, Carlisle Pollock, a notary public, in and for the city of New Orleans, duly commissioned and sworn, personally came and appeared Christopher Adams, of the parish of Iberville, in this State, who declared and acknowledged that he is justly and truly indebted unto the Life and Fire Insurance Company in the city of New York, in the sum of thirty-two thousand dollars five hundred and twenty dollars and fifty cents, lawful money of these United States, for the payment of which he has granted the following described promissory notes, viz: five notes, each for the sum of five thousand dollars, dated the eighteenth day of November, eighteen hundred and twenty-three, subscribed by him, the said Christopher Adams, to the order of, and endorsed by Joseph Erwin, of the parish of Iberville aforesaid, and afterwards endorsed by the house of trade of Messieurs William Kenner & Company, of this city, merchants, payable at the office of the Life and Fire Insurance Company, in the city of New York, at the following periods, viz: the first on the eighteenth of January, eighteen hundred and twenty five, and the four others on the corresponding days of each succeeding year, so that the last will become due on the eighteenth day of January which will be in the year eighteen hundred and twenty-nine, making together the sum of twenty-five thousand dollars $25,000 00

And for the remaining sum of seven thousand five hundred dollars and twenty two dollars and fifty cents he has granted his nine several promissory notes, each dated the eighteenth day of November, eighteen hundred and twenty-three, payable at the office of the said Life and Fire Insurance Company, in the city of New York, to the order of, and endorsed by, the said Joseph Erwin, and afterwards by the said house of Wm. Kenner & Co. in manner following, to wit:

1. One note for fifteen hundred dollars, payable in six months 1,500 00
2. One note for the sum of twelve hundred dollars, payable in eight months 1,200 00
3. One note for the sum of nine hundred dollars, payable in thirty months 900 00

4. One note for the sum of six hundred dollars, payable in forty-two months	600 00
5. One note for three hundred dollars, payable in fifty-four months	300 00
6. One note for the sum of twelve hundred and eight dollars and seventy-five cents, payable in twelve months	1,208 75
7. One note for the sum of nine hundred and six dollars and twenty-five cents, payable in twenty-four months	906 25
8. One note for the sum of six hundred and five dollars, payable in thirty six months	605 00
9. One note for the sum of three hundred and two dollars and fifty cents, payable in forty-eight months	302 50
Dollars,	32,522 50

All which notes, being fourteen in number, after having been countersigned nevanitur by me, the said notary, for the purpose of identifying them with this act, have been, in the presence of the said notary, and of the undersigned witnesses, delivered unto Richard Relf, of this city, esquire, agent of the said Insurance Company, the receipt whereof he hereby acknowledges: and for the purpose of securing the payment of said notes, when they shall respectively fall due; and also, to comply with the conditions contained in a certain agreement made and executed in the city of New York, on the 17th November, 1823, which, at the request of the said parties to these presents, a true copy whereof has been hereunto annexed to make part of this act, for the purpose of explaining the obligations of the parties thereto, for as much as concerns the life insurance therein mentioned, he, the said Christopher Adams, does hereby, for himself and his heirs, specially mortgage and hypothecate, unto Henry Eckford, president of the said Insurance Company, and his successor and successors in office, all and singular the property hereinafter described, viz:

All that plantation, situate, lying, and being in the parish of Iberville, in this State, five leagues above Lafourche, designated and known by the name of the Belle plantation, measuring fourteen arpens in front on the right bank of the river Mississippi, by eighty arpens in depth; bounded on the upper side by land heretofore of Nicholas Willon, now the property of John Oldham, of this city, and below by land belonging to widow Blanchard, together with all the buildings, thereunto belonging, being the same tract of land which the said Christopher Adams acquired by purchase from Aubry Dupery and Samuel Spraggins, by acts recorded in the office of the judge of the parish of Iberville; also, all the cattle and stock of whatever description, implements of husbandry and moveables now on and belonging to said plantation; also, seventy slaves, of the following names and ages: Old Billy fifty years, Cook forty years, Old John forty years, Little Moses sixteen years, Jerome fifty years, Old Lewis forty years, Young Lewis eighteen years, Kentucky Lewis twenty years, Big Bill twenty-seven years, Kit twenty-five years, Frank thirty years, Big John twenty-six years, John Winfrey thirty five years, Jack Wright eighteen years, Dick twenty-eight years, Sandy twenty-two years, Jim Barber twenty-two years, Little Sam twenty-two years, G. Sam twenty-four years, Charles eighteen years, Squire sixteen years, Cuffy sixteen years, Henry twenty-two years, Spencer twenty-eight years, Pompy thirty-five years, Caleb twenty-five years, Tom eighteen years, Little Jim twenty-one years, Ned thirteen years, Old Aleck thirty-four

years, Little Aleck ten years, Manuel eight years, Priscey forty years, Daphny forty years, Peggy thirty years, Little Aggy eighteen years, Little Clarissa eighteen years, Polly sixteen years, Big Maria twenty four years, Lucy twenty-two years, Lydia twenty-seven years, Eddy sixteen years, Sydney fourteen years, Susan twenty five years, Celeste twenty years, Jenny twenty six years, and her three children Rosine of four years, Giles three years, and Margarette one year, Big Clarissa twenty-six years, and her three children, Barbary six years, Sam four years, and John two years, Meline a twenty-two years, and her two children, John four years and William two years, Anne twenty years, and her two children Jim four years and Louisa one year, Marianne twenty-four years, Solomon her child two years, Little Maria twenty years, and her two children Martha three years and Pelage one year, Maria Jones twenty four years, and her two children Jim six years and Eliza two years, all which slaves are warranted free from the vices and maladies prescribed by law: Which lands, slaves, buildings, improvements, appurtenances, cattle, stock, implements of husbandry, and moveables are so to remain mortgaged until the full and entire payment of all and singular the said aforedescribed promissory notes, and of all and every part thereof according to their tenor: And the said Christopher Adams further declared, that he does moreover, for the purpose of securing the true and punctual payment of the notes, at the times when they shall respectively become due and payable, by these presents, for himself and his heirs, grant, bargain, sell, assign, transfer and set over unto the president of the said Insurance Company, and his successor and successors in office, all the crops which shall be made from year to year on the said plantation, from and after the date of these presents, and until the said obligations and each of them, and all and every part thereof, shall have been fully paid and discharged, and hereby binds himself and his heirs, annually to ship or cause to be shipped the said crops from New Orleans to New York, on approved vessels, and consigned to the said president or his successor or successors in office to be sold, on account and risk of him the said Christopher Adams, and at his cost, for which said Company shall be allowed to charge the premium for insurance and the usual commission for selling the same.

And Richard Relf, agent of the said Insurance Company, being present, declared that he does, in his said quality, for and in their name and behalf, accept the foregoing mortgage and assignment; and according to the certificate of the conservator of mortgages in this city, there are no incumbrance on the said land, slaves, and appurtenances.

Done and passed at New Orleans, in the presence of George Pollock and William Boswell, witnesses, who have signed their names as such with the parties, and me the notary, this sixteenth day of January, one thousand eight hundred and twenty-four.

Signed, CHRISTOPHER ADAMS,
RICHARD RELF.

GEORGE POLLOCK,
W. BOSWELL.

CHARLES POLLOCK, *Not. Pub.*

The foregoing mortgage has been regularly and officially certified by the said notary, at the foot of the original on file in the clerk's office of the U. S. District Court, Eastern D. Louisiana, but was accidentally omitted in this place.

Be it known and remembered, that on this second day of May, one thousand eight hundred and twenty-six, before me, Greenbury Ridgly Stringer, notary public, in and for the city of New Orleans, duly commissioned, personally came and appeared Christopher Adams, of the parish of Iberville, in this State, planter, party hereunto, of the one part, and Josiah Barker, Esq. agent, and herein acting for and on behalf of the Life and Fire Insurance Company of New York, party hereunto, of the other part. The said appearers declared that, whereas a certain suit is now pending in the Court of the United States for the Eastern District of Louisiana, wherein the said Life and Fire Insurance Company are plaintiffs and the said Christopher Adams is defendant.

Now therefore, they, the said parties, enter into the following stipulations in relation to the said suit, that is to say: that the injunction granted in said suit shall be dissolved, and the defendant consents to confess judgment to the plaintiffs, and accordingly does hereby confess judgment in the sums following, to wit: the sum of fifteen hundred dollars, due on the eighteenth day of May, one thousand eight hundred and twenty four; the sum of twelve hundred and eight dollars and seventy-five cents, due on the eighteenth day of November, one thousand eight hundred and twenty-four; the sum of five thousand dollars, due on the eighteenth day of January, one thousand eight hundred and twenty-five; the sum of twelve hundred dollars, due on the eighteenth day of May, one thousand eight hundred and twenty-five; the sum of nine hundred and six dollars and twenty-five cents, due on the eighteenth day of November, one thousand eight hundred and twenty five; and five thousand dollars due on the eighteenth day of January, one thousand eight hundred and twenty-six; being the amount of instalments of the notes mentioned in the mortgage declared on in the said suit, which have already arrived at maturity and become payable, together with interest to be calculated thereon from the time they have respectively fallen due and become payable, at the rate of seven per cent. per annum, according to the laws of the State of New York, where said notes were made payable and became due: and the said Adams does further stipulate and agree, that as soon as any and every of the residue of the notes, mentioned in said mortgage, shall respectively fall due, he will confess judgmeht thereon, for the amount of each *note*, together with seven per cent. interest, from the time each and every of the said notes shall arrive at maturity; and, in default of such confession of judgment so to be made by said Adams, he does by these presents constitute and appoint Henry Eckford, Esq. president of the Life and Fire Insurance Company, or his successor in office, for the time being, his attorney in fact and irrevocable, in his name and stead, to appear in said court and cause judgment to be entered up against him, the said Adams, for each and every of said notes, with interest as aforesaid, whenever the same shall have arrived at maturity as aforesaid. The said notes which have not now arrived at maturity being as follows: to wit, one note for the sum of nine hundred dollars, due the eighteenth day of May, eighteen hundred and twenty-six; one note for the sum of six hundred and five dollars, due the eighteenth day of November, eighteen hundred and twenty-six; one note for the sum of five thousand dollars, due the eighteenth day of January, eighteen hundred and twenty-seven; one note for the sum of six hundred dollars, due the eighteenth day of May, eighteen hundred and twenty-seven; one note for the sum of three hundred and two dollars and fifty cents, due the eighteenth day of November, in the year eighteen hundred and twenty-seven; one note for the sum of five thousand dollars, due the eighteenth day of January, eighteen hundred and

twenty-eight; one note for the sum of three hundred dollars, due the eighteenth day of May, eighteen hundred and twenty eight; and, one note for the sum of five thousand dollars, due the eighteenth day of January, in the year eighteen hundred and twenty-nine; and, with the notes above recited, which have already arrived at maturity, make the aggregate amount of thirty two thousand five hundred and twenty two dollars and fifty cents, principal, exclusive of interest thereon. And the said Adams does further give to said Henry Eckford, president as aforesaid, or to his successor in office, for the time being, attorney as aforesaid, full power of substitution in the premises, and one or more attorneys under him to appoint and constitute, and the same to revoke at pleasure.

And the said Life and Fire Insurance Company hereby agree and stipulate, in consideration of such confession of judgment and preserving all their leins, mortgages, and preferences, in and over the property mortgaged, to stay the execution and sale of the mortgaged property aforesaid, until the period on which the last note above mentioned shall arrive at maturity, which will be on the eighteenth day of January, in the year of our Lord one thousand eight hundred and twenty nine as aforesaid, and as expressed in said mortgage. And the said Life and Fire Insurance Company further agree with said Adams to file all the notes mentioned in said act of mortgage, with the records of this suit, before the stay of execution aforesaid shall expire and terminate.

And, Joseph Erwin, who was the payee and endorser of the notes mentioned in the plaintiff's petition, being also present, declared that he assents and agrees to the stay of seizure and sale of the mortgaged premises before stipulated, considering this transaction to be the best arrangement which can be made for all parties in the premises.

And, it is further stipulated and agreed by and between all the parties before named, that this transaction shall be entered upon the records of the said court of the United States for the eastern district of Louisiana, as aforesaid; and the same shall be entered up as a decree of said court, and shall have all the force and effect as though it were entered up in open court. Thus done and passed in presence of John Stringer and John Peterkin, witnesses, who hereunto sign their names as such, with the said parties, and me the notary.

(Signed)

CHRIST'R ADAMS,
JOSIAH BARKER,
JOSEPH ERWIN.

JOHN PETERKIN,
J. STRINGER.

And G R. STRINGER, *Not. Pub.*

I certify the foregoing to be a true copy of the original act, extant, in my current register. In faith whereof, I grant these presents under my signature and seal of office, on this 13th day of May, 1826.

G. R. STRINGER, *Not. Pub.*

In testimony whereof, I grant these presents under my signature and official seal at the city of New Orleans, this twenty-seventh day of July, eighteen hundred and twenty-eight

G. R. STRINGER, *Not. Pub.*

Agreeably to the prayer contained in the conclusion of the foregoing petition, the following order of seizure and sale was made by his honor T. B. Robertson, judge of said court, on the 15th day of February, 1826, to

Order of Seizure and Sale.

Let the mortgaged premises set forth and stated in the plaintiff's petition be seized and sold as therein prayed for and in the manner directed by law, subject to the payment of debt of plaintiff.

TH. B ROBERTSON,
Judge U. S., Eastern District Louisiana.

New Orleans, May 15th, 1826.

Writ of Seizure and Sale.

The President of the United States of America to the Marshal of the eastern district of Louisiana, his lawful deputy, greeting:

THE LIFE AND FIRE INSURANCE COMPANY of the city of New York,
vs.
CHRISTOPHER ADAMS.

You are hereby commanded to make seizure of, and to sell the property, lands, and slaves, belonging to the defendant in this suit and described in the annexed copies of petition and mortgage, to satisfy the plaintiffs of the sum of thirty one thousand and twenty dollars and fifty cents, with interest, damages, and costs; and what you do in the premises, make report thereof to our said court at the city of New Orleans, on the 3d Monday of May next. Witness the honorable T. B. Robertson, judge of our said court at the city of New Orleans, this 16th day of February, A. D. 1826, and in the 50th year of the independence of the United States.

F. W. LEA, *Dy. Cl'k.*

The above writ having been placed in the hands of the marshal of the said court, was returned in the month of April, 1826, with the following return:

Received this process on the 17th February, 1826; made service thereof on defendant by leaving copies thereof and copy of petition with his brother Robert, at defendant's domicil, distance about 90 miles from New Orleans; and, by virtue hereof, I made seizure of defendant's plantation called the Belle plantation, having fourteen arpens in front by eighty arpens in depth, situate on the right bank of the Mississippi, bounded on the upper side heretofore of N. Orillion, and below by lands of widow Blanchard, together with all the improvements, buildings, and appurtenances, thereto belonging; also, all the cattle and stock of whatsoever description, implements of husbandry, and moveables, now on said plantation; and, also, the following named slaves, as per inventory herewith marked A, and making part of this return: and advertised the same to be sold on the 23d March, 1826. Returned 6th April, 1826.

JOHN NICHOLSON, *Marshal.*

Inventory of slaves referred to in marshal's return, viz: Bill, Jack, Cuffy, Spencer, Jack Winefred, Kitt, Dick, Daniel, Nelson, Tandy, Harry, Jerry, August, John, G. Sam, Little Sam, Tom, Jack Wright, Charles Squire, Little Charles, Louis, Lewis, Little Bill, Old John, Pompey, Mose,

Old Mose, Cook, Daphney, Priscey, Judy, Manuel, Giles, Jenny, Margaret, Rosine, Jesy, Anny, Jim, Hannah, James, Eliza, Hannah, Big Maria, Little Maria, Eddy, Ann, Lydia, Clarissa, Barley, Sam, John, Mary Ann, Solomon, Lucy, Polly, Penelope, Nancy, Melinda, Celeste, John, William, Daphne—13 horses, 7 mares, 6 colts, 8 mules, 8 pair oxen, 60 gentle cattle, 2 ox carts, 2 horse ditto.

E. E.

JOHN NICHOLSON, *Marshal.*

And afterwards, to wit, on 26th February, 1826, at the February term of said court, and before the time had arrived for the sale of the above described property, agreeably to notice given by the marshal in pursuance of the said order of seizure and sale to him directed, the following rule of court was entered on the minutes of said court, to wit:

TUESDAY, 26th February, 1826.

The court met pursuant to adjournment—Present Hon. T. B. ROBERTSON.

THE LIFE AND FIRE INSURANCE COMPANY, New York, *vs.* CHRISTOPHER ADAMS. } *Writ of Seizure and Sale.*

On motion of G. Strawbridge, counsel for the defendant, ordered that the plaintiff show cause on the 3d of March next, why the order of seizure and sale issued in this case, should not be set aside and quashed as having been improperly issued—

1st. Because no proof has been exhibited of the citizenship of the plaintiff so as to give jurisdiction to this court.

2d. Because no demand has been made, or alleged to have been made, where the said notes were made payable.

3d. Because the notes filed have been paid.

And afterwards, to wit, on the first day of March, eighteen hundred and twenty-six, the following additional ground for setting aside the order of seizure and sale was ordered to be entered upon the minutes of the said court, to wit:

WEDNESDAY, 1st March, 1826.

The court met pursuant to adjournment—Present the Hon. T. B. ROBERTSON.

THE LIFE AND FIRE INSURANCE COMPANY, of New York, *vs.* CHRISTOPHER ADAMS.

Additional ground filed by defendant—that the two suits being for the same cause of action cannot be both maintained.

The rule heretofore granted in this case, on the 26th February, 1826, requiring the plaintiff to show cause why the order of seizure and sale granted in said case should not be set aside for the reasons therein stated, having been made returnable on the 3d March, 1826, the following order of court was entered on record, viz:

LIFE AND FIRE INSURANCE COMPANY, of New York,
vs.
CHRISTOPHER ADAMS.

On motion, ordered, that the rule taken in this case be overruled.

And afterwards, to wit, on the 17th March, 1826, and before the day of sale in pursuance of the said order of seizure and sale had arrived, the said Christopher Adams filed in the clerk's office of the said court the following bill of injunction, to wit:

To the honorable Thomas Bowling Robertson, Judge of the District Court of the United States for the Eastern District of Louisiana.

The petition of Christopher Adams, of the parish of Iberville, respectfully represents, that on the day of February last past, an order of seizure and sale, issued from this court against the property of your petitioner at the suit of the New York Life and Fire Insurance Company, under which, the plantation, slaves, and stock, of your petitioner, are seized and about to be sold.

Your petitioner admits that he executed the authentic act on which the said orders issued, and that he signed the several notes filed to which the said mortgage is collateral; but he avers that, in pursuance of the said contract, he regularly placed in the hands of William Kenner & Co., his crop and other means; that the said W. Kenner & Co., from time to time, made large remittances to New York, in produce, (in part the crop of your petitioner;) bills of exchange set the proceeds of which your petitioner is advised and believes did actually to the hands of the said Life and Fire Insurance Company: but the said company have either not credited such sums at all, or have *or have* credited them in the account of some other person to which they were not properly imputable. That, up to the time of the embarrassment and failure of the house of Kenner & Co., your petitioner never heard of the protest or non-payment of said notes, although some of them were then due more than a year before, but on the contrary found himself charged in the account current of the said Kenner & Co. with the amount of said notes, as cash paid for his account, which induces him to believe that it is since the failure of Kenner & Co. that said payments have been imputed to their account, holding against your petitioner the notes which were in due course paid at their maturity.

Your petitioner therefore prays that a writ of injunction may issue, directing the marshal to stay the said seizure and sale, that the defendants be cited to appear and answer, and be decreed to impute the said payments to the account of your petitioner, together with said other and further relief as he may be entitled to.

GEO. STRAWBRIDGE, *for Plaintiff.*

Christopher Adams being sworn, deposes that the above mentioned facts are true, as stated in the petition, as he fully believes.

CHRIS'R ADAMS.

Sworn to in open court 15th March, 1826.

S. H. HARPER, *Clk.*

Agreeably to the petition above, the following order was made by his honor judge T. B. Robertson, to wit:

Let an injunction issue in this case upon the conditions required by.

T. B. ROBERTSON,
Judge U. S. East. Dist. Louisiana.

And afterwards, to wit, on the 18th March, 1826, the following injunction in obedience to the foregoing order issued from the clerk's office of said court, to wit:

The President of the United States of America to the Life and Fire Insurance Company, greeting:

Whereas Christopher Adams, a citizen of the State of Louisiana, has exhibited his bill of complaint into the district court of the United States within and for the eastern district of Louisiana, before the hon rable Thomas Bowling Robertson, judge of said court, sitting in his capacity of chancellor, against you the said Life and Fire Insurance Company of New York, (the defendants,) touching the matters therein contained, and of which, a copy herewith handed you.

Now, therefore, in consideration of the premises, you, your counsellors, solicitors, and agents, and every of them, are hereby strictly enjoined and commanded, absolutely, to desist from all further proceedings at law against the said complainant, touching any of the matters in the said bill c mplained of, until you shall have fully answered the said bill, and until the further order of this court. Witness the honorable Thomas Bolling Robertson, judge of the said court, at the city of New Orleans, this 18th day of March, in the year of our Lord, 1826, and 50th year of the independence of the United States of America.

F. W. LEA, *Dep. Cl'k.*

The foregoing injunction having been placed in the hands of the marshal of the said court, was returned with the following return, to wit:

No. 2,382 Christopher Adams *vs.* The Life and Fire Insurance Company of New York. Received this writ of injunction on the 18th March, 1826; and served a copy thereof, and of plaintiff's petition on Ripley & Conrad; on same day delivered the property in custody of marshal, at suit of Life and Fire Insurance Company of New York, against Christopher Adams, and returned into court on 20th March, instant.

JAMES NICHOLSON, *Dy. M.*

And afterwards, to wit, at a court of the United States for the eastern district of Louisiana, in the city of New Orleans, on the 18th May, 1826, the following decree was rendered in pursuance of an agreement entered into by the parties and filed in the said cause, to wit:

THURSDAY, 18th May, 1826.

The court met pursuant to adjournment—Present the Hon. T. B. ROBERTSON.

LIFE AND FIRE INSURANCE COMPANY, of New York,
vs.
CHRISTOPHER ADAMS.

In this case the plaintiffs having filed in this court a transaction entered into between the parties, before Greenbury Ridgely Stringer, Esq., a notary

public in and for the city of New Orleans, and the same being read to the court, it is thereupon ordered, adjudged, and decreed, that in pursuance of said transaction, the injunction in this case shall be dissolved; and it is further ordered that judgment be entered up in favor of the plaintiff, in pursuance of said transaction, for all the notes therein specified which have become due and payable, with seven per cent. interest thereon from the time they and each of them, respectively, arrive at maturity until final payment, to wit: The sum of fifteen hundred dollars, due on the 18th day of May, 1824; the sum of twelve hundred and eighty dollars seventy-five cents, due on the 18th day of November, 1824; the sum of five thousand dollars, due on the 18th day of January, 1825; the sum of twelve hundred dollars, due on the 18th day of May, 1825; the sum of nine hundred and six dollars twenty five cents, due on the 18th day of November, 1825; and five thousand dollars, due on the 18th day of January, 1826. It is further ordered, adjudged, and decreed, in pursuance of the transaction aforesaid, that whenever any of the notes mentioned in said transaction, as not yet arrived at maturity, shall become due and payable, that then judgment shall be entered up for the plaintiffs upon all and every of said notes, as they arrive at maturity, until their final payment; it is further ordered, adjudged, and decreed, that there shall be a stay of execution on said judgment until the 18th day of January, 1829; and that, if the amounts of the judgment in this suit is not then paid, including interest, principal, and costs, on that day, that the land, slaves, and moveable property, described in the mortgage mentioned in the plaintiff's petition, shall be sold according to law to satisfy the judgment in the premises. It is further ordered, adjudged, and decreed, that the defendant pay costs.

Before the time had arrived when execution, in pursuance of the foregoing judgment, could have issued, and before the said judgment had been signed by his honor the late judge T. B. Robertson, he, the said judge, departed this life; and no further proceedings appear to have taken place until the 21st day of May, 1832, when the following notice was filed in the clerk's office of the said court, to wit:

THE LIFE AND FIRE INSURANCE COMPANY, *vs.* CHRISTOPHER ADAMS. } *Dist. Ct. of U. S. E. D. La.*

To CHRISTOPHER ADAMS, Esq.

SIR: Please to take notice that on the first day of May court next, or on such subsequent day of said term as the court may be held for the transaction of business, we shall apply to the honorable judge of the district court of the United States for the eastern district of Louisiana, on behalf of the plaintiffs in this case, to sign a certain final judgment rendered against you in May term of said court, 1826; and to order that execution issue thereon.

JNO. R. GRYMES, E. EUSTIS, } *For Pl'ff.*

NEW ORLEANS, 17*th April*, 1832.

STATE OF LOUISIANA, *Parish of Iberville.*

Personally appeared before the undersigned, a justice of the peace in and for the parish of Iberville aforesaid, Thomas Gibber Morgan, who being duly sworn aforesaid, says that on the 30th day of April, A. D. 1832, he

served a true copy of the within notice on Christopher Adams, the party to whom the same is addressed, by delivering the same to the said Christopher Adams, in person, at the parish judge in and for the parish of Iberville, aforesaid.

THOMAS GIBBER MORGAN.

Sworn to and subscribed before me this 30th day of April, A. D. 1832.

TIRRONT LABBAUE, *Justice of the Peace.*

The foregoing notice and proof of service thereof having been exhibited to the said court on the first day of its regular term, to wit, on the third Monday in May, 1832, the following order was entered on the minutes of the said court, to wit:

UNITED STATES' DISTRICT COURT, *May Session*, 1832.

The court this day met pursuant to adjournment from the last day of the February term.

MONDAY, 21st May, 1832.

Present the honorable SAM'L H. HARPER.

THE LIFE AND FIRE INSURANCE COMPANY,
vs.
CHRISTOPHER ADAMS.

This day came the plaintiffs by their attorneys, and exhibited notices given to the defendants, which were filed, and the proof of the same thereof; and thereupon moved the court to sign the judgment in this case, in May term of this court in the year 1826, and to award execution thereon: whereupon, on motion of the defendant by counsel, and with the consent of the counsel for the plaintiffs, it is ordered that this motion be continued 'till Monday next, then to be determined.

And afterwards to wit, on the 28th day of May, 1832, to which time the above order had been made returnable, the following order of court was made and placed upon the record of the said court, to wit:

MONDAY, 28th May, 1832.

The court met pursuant to adjournment—Present Hon. SAM'L H. HARPER.

LIFE AND FIRE INSURANCE COMPANY,
vs.
CHRISTOPHER ADAMS.

This being the day to which the notice hereof given to the defendants had been continued, notifying them the said defendants that application would be made to the present honorable judge of the said court to sign the judgment rendered in this case, May term, 1826, by the late judge Robertson, the notice was received and the question argued by counsel on both sides; whereupon, the court took time to reflect upon the said question involved.

And afterwards, to wit, on the 2d day of June, 1832, the following order was entered in the said case upon the record, to wit:

SATURDAY, 2d day of June, 1832.

The court met pursuant to adjournment—Present Hon. SAMUEL H. HARPER.

THE LIFE AND FIRE INSURANCE COMPANY,
vs.
CHRISTOPHER ADAMS.

The court having maturely considered the plaintiff's application and the question therewith involved, doth now order that said notice be now overruled.

EASTERN DISTRICT OF LOUISIANA, *ss.*

I, Byrd B. Waller, deputy clerk of the district court of the United States for the eastern district of Louisiana, do hereby certify that the foregoing thirty-two pages contain a true and faithful transcript of the record, together with all things relating thereunto in the case in said court, wherein the Life and Fire Insurance Company of the city of New York, are plaintiffs, and Christopher Adams, defendant, as fully as the same now remains on record in said court.

In testimony whereof, I have hereunto set my hand and affixed the seal seal of the said court at the city of New Orleans, this 6th day of June, 1832, and in the 56th year of the independence of the United States.

[L. S.] BYRD B. WALLER, *D. C.*

UNITED STATES OF AMERICA.

I, Samuel H. Harper, judge of the district court of the United States for the eastern district of Louisiana, do hereby certify that Byrd B. Waller, who has certified the foregoing transcript, is now, and was at the time of so doing, deputy clerk of said court; and that to his official attestations as such full faith and credit are due; and further, that the attestation to such transcript is indue form of law. Witness my hand and seal at New Orleans, this 9th day of June, 1832.

SAM. H. HARPER, [L. S.]

The following from his honor Judge S. H. Harper, contains his only reasons for overruling the motion of the plaintiffs, and refusing to sign the judgment in the Life and Fire Insurance Company of New York, *vs.* Christopher Adams, and the same plaintiff against the heirs of Nicholas Wilson.

THE LIFE AND FIRE INSURANCE COMPANY,
vs.
CHRISTOPHER ADAMS.
and
THE SAME,
vs.
THE HEIRS OF NICHOLAS WILSON.

At the May May term, 1826, Judge Robertson then presiding, the counsel for the plaintiffs moved the court to enter on the minutes judgments in

these cases, founded as was alleged on separate transactions in the civil law sense of the term, entered into before a notary public. The entry on the minutes of the court was accordingly made. The record shows that Judge Robertson held three terms of the court afterwards, and died in the autumn of 1828, without having signed these judgments; and now the plaintiffs move that I, as his successor, sign the said judgments in order to render them executory. This application is resisted by the defendants on several grounds, but principally, 1st, because they say there never was any legal judgment given; and, 2d, that the record of the proceedings does not exhibit such a case as entitled the plaintiffs to a judgment. If the first position of the defendants be correct, viz: that no legal judgment has been given—the application of the plaintiffs must fail By a positive law of Louisiana, all judgments rendered, if not set aside for legal cause within a given number of days, must be signed by the judge before execution can be taken out upon them. In other words, the judgments are not complete, or rather no judgments at all, until they are signed. It has long since been settled by the Supreme Court of the United States in the case of Brown *vs.* Van Braan, and in several others cases, "that the practice under the laws of a State furnishes a rule by which the courts of the United States sitting in that district may proceed;" and accordingly, the practice of signing judgments in this court, in common law cases, has prevailed ever since the origination in conformity with the State practice. It was contended in argument by the counsel for the plaintiffs, that the act of signing a judgment is mere formality; if that be so, this application is useless; but the fact is otherwise, for a law of this State requires the signature of the judge before the judgment can be carried into effect, for there may arise sufficient reasons between the rendition of judgment *pro forma* and the time allowed for signing it, to induce the judge to withhold his signature: that such reasons did arise in this case may be presumed, for it is a legal presumption that public functionaries perform their duties especially when required; and, although it is not expected that a judge will call for and sign judgments without being so required, yet it is strange that a party so much interested should not have made application to the judge, in the course of two years, to sign these judgments; and, it is also remarkable that the plaintiff's attorneys of record, who procured the making of the judgment entries, never have 'till this day made any such application; but on the contrary, the record shows that they subsequently instituted new suits in the name of the assignees of the original plaintiffs against the same defendants to recover the amount now in controversy. Why did they proceed in this manner if they had a right to the original judgments? The judge's signature to a judgment being by our law an essential part of it, inasmuch as it is a dead letter without it, it follows that he who signs it makes it his own judgment; therefore, were I to give validity to what is here called a judgment, by affixing to it my signature, would it not be to pronounce upon the rights of the parties whose cause I have never heard. It has been decided in the highest tribunal in this country that a new trial can only be granted by the judge who heard the cause, (6 Wheat. p. 542) for no one else can be presumed to exercise a sound discretion on the subject, with the circumstances of which he is totally ignorant. When indeed the record on its face is so defective that no judgment could be legally pronounced, it would be set aside for that cause only. If then the reason assigned for not granting a new trial by a judge who did not hear the cause, to wit, his ignorance of the circumstances attending the trial, be a good one, it must also be sufficient for not carrying into effect the

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imperfect judgment of another given on grounds of which he is ignorant. That such was the view taken by the Legislature of this State on this subject, is manifest from the 11th section of the act of 1817 on the subject, by which law it is declared that the judge rendering a judgment must remain long enough at the place of holding the court in order to sign it. The idea of a court never dying, and therefore mechanically carrying on its operations like any corporate body, is inadmissible; for although the courts of the United States are not dissolved in consequence of the death of a judge, yet the business in those courts does not proceed mechanically; every judge is an independent moral agent accountable only for his own decisions, and not compellable to sanction those of his predecessor, against his conscience, when such sanction depends on his own free will. If legal and complete judgments had been rendered in these cases, however erroneous they might be, I would have no power to correct them, for to them would be strictly applicable the rule of law that due faith and credit must be given to such records; but as I conceive no such legal and complete judgments have been rendered in these cases, that rule has no application to them further than respects the genuineness of the proceedings so far as they go. Having arrived at this conclusion, it is unnecessary to discuss the other objections made by the defendants arising out of the proceedings themselves. Discussions on these points, I arrested the arguments on the motion conceiving them to be irrevelant, but enough was observed from the necessity of opening the case, to satisfy my mind that greater injustice would be done by sustaining the motion than by refusing it. Which, for the foregoing reasons, is refused.

CLERK'S OFFICE, *United States'*
District Court E. D. Louisiana.

NEW ORLEANS, *June 12th*, 1832.

I hereby certify that the foregoing contains a true and faithful transcript from the opinion of his honor Sam'l H. Harper, judge of the said court, in the cases Life and Fire Insurance Company *vs.* Christopher Adams, and the same *vs.* the heirs; which said opinion is on file in this office and has been attached to this transcript at the instance of the plaintiffs.

[L. S.] BYRD B. WALLER, *D. C.*

I certify that the reasons stated in the foregoing opinion are the only ones which induced me to refuse the motion.

SAM'L H. HARPER, *Judge U. S. for La.*

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Notice of motion to be made on the 16th Feb'y, for a Mandamus to Judge Harper to sign the Judgment and order Execution, dated 4th Dec. 1832, was served on Judge Harper and Alfred Hannen, Defts' Attorney, the 27th Dec.: proved by the oath of G. Eustis taken before Judge Mathews: certificate of the Governor of his being Chief Judge: notice served on the widow of Nicholas Wilson, David D. Chesnut, Lavinia Wilson, Jos'h E. Wilson, Alex'r Wilson, John N. Wilson and Caroline E. Wilson, the 3d Jan'y 1833, by Josiah Barker: affidavit before Judge Dutton: certificate of Governor.

THE LIFE AND FIRE ...

PLAINTIFFS,

VERSUS

THE HEIRS OF NICHOLAS WILSON.

ON MOTION OF PLAINTIFFS FOR A MANDAMUS TO THE DISTRICT COURT U. S. FOR E. LOUISIANA.

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THE LIFE AND FIRE INSURANCE COMPANY OF NEW YORK, *against* THE HEIRS OF NICHOLAS WILSON. } *No. 2,415. District Court of the United States, Eastern District Louisiana.*

To the Honorable the Supreme Court of the United States:

The petition of the plaintiffs above named, respectfully represents:

That Nicholas Wilson, late of Iberville, Louisiana, deceased, on the 14th January, 1824, executed and acknowledged, at New Orleans, before a notary public, a mortgage of a certain plantation, called the Evergreen, in Iberville aforesaid, with the appurtenances to the same belonging, and also thirty-five slaves, particularly named in said mortgage, for securing to your